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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 MARVIN LOUIS LOWERY JR.,) Case No. CV 18-9644-R (JPR)
13 Plaintiff,)
14 v.) ORDER DISMISSING FIRST AMENDED
15 CITY OF LOS ANGELES et al.,) COMPLAINT WITH LEAVE TO AMEND
16 Defendants.)
17

18 On November 15, 2018, Plaintiff filed pro se what the Court
19 construed as a civil-rights action under 42 U.S.C. § 1983. He
20 was subsequently granted leave to proceed in forma pauperis. On
21 December 19, 2018, the Court dismissed the Complaint under 28
22 U.S.C. § 1915(e) with leave to amend, advising Plaintiff of the
23 availability of help from one of the federal "pro se" clinics in
24 this District. On January 14, 2019, he filed a First Amended
25 Complaint. His claims arise from a warrantless misdemeanor
26 arrest at the Westwood branch of the Los Angeles Public Library
27 on June 21, 2018.

28 After screening the FAC under § 1915(e)(2), the Court finds

1 that its allegations still fail to state a claim upon which
2 relief might be granted. Although it does not appear that
3 Plaintiff can state an actionable claim under § 1983, in light of
4 his pro se status the Court dismisses the FAC with leave to amend
5 to afford him one last opportunity to remedy its deficiencies.
6 See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en
7 banc) (holding that pro se litigant must be given leave to amend
8 complaint unless it is absolutely clear that deficiencies cannot
9 be cured).

10 If Plaintiff desires to pursue any of his claims, he is
11 ORDERED to file a second amended complaint within 28 days of the
12 date of this order, remedying the deficiencies discussed below.
13 He is warned that further failure to cure the below-noted defects
14 may result in dismissal of his lawsuit.¹ See Nevijel v. N. Coast
15 Life Ins., 651 F.2d 671, 674 (9th Cir. 1981) (affirming dismissal
16 of amended complaint that was "equally [deficient] as the initial
17 complaint"); Mitchell v. Powers, 411 F. App'x 109, 110 (9th Cir.
18 2011) (affirming dismissal of pro se plaintiff's amended
19 complaint with prejudice for containing "same deficiencies as the
20 original complaint").

21 ALLEGATIONS OF THE FAC

22 The FAC consists of a three-page discussion of the
23 undersigned's previous screening order followed by what is

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25 ¹ Plaintiff may, of course, choose to stand on his claims as
26 pleaded rather than amend them. See Edwards v. Marin Park, Inc.,
27 356 F.3d 1058, 1063-64 (9th Cir. 2004). But that does not obligate
28 the Court to order his complaint served; rather, the Court may
consider an "election not to amend at face value, enter[] a final
judgment dismissing all claims with prejudice, and allow[]" Plaintiff to seek immediate appellate review. Id. at 1064.

1 apparently a verbatim copy of the original Complaint. (Compare
2 Compl. at 4-16, with FAC at 6-19.) Accordingly, the Court does
3 not repeat the Complaint's factual allegations, which it
4 summarized in detail in its December 19 order.

5 Plaintiff again sues the City of Los Angeles and the Los
6 Angeles Public Library. (FAC at 1, 4, 7-8.) He does not name
7 any individuals as Defendants, although his allegations mention
8 librarian Christy Carr, another librarian, several police
9 officers, and various other people who he contends were involved
10 in some or all of the events giving rise to his lawsuit. (See,
11 e.g., id. at 4, 15, 17, 18 & Ex. D at 33, 36.) He brings causes
12 of action for false arrest under the Fourth Amendment (FAC at
13 15),² "[f]alse [i]mprisonment" (id. at 16), and "[m]ental
14 [a]nguish" (id. at 16-17). His claims apparently arise only from
15 the June 21, 2018 arrest and detention and not the suspension
16 letter or any later removal from the library premises. (See,
17 e.g., id. at 10 ("The major aspect of this complaint is the basis
18 behind that librarian's 'Citizen's Arrest [on June 21, 2018].'");
19 see also, e.g., id. at 4 (Plaintiff sues because "sitting in a

20
21 ² In his three-page preamble to the FAC, Plaintiff repeatedly
22 asserts that he is not bringing any "Civil Rights" claims (FAC at
23 4) and that he sues only under various state Government Code
24 provisions (id. at 6). But when he lists his actual causes of
25 action, he indicates that his false-arrest claim asserts a
26 "[v]iolation of the Fourth Amendment." (Id. at 15.) Of course, if
27 Plaintiff truly sues only under state law, this Court lacks
28 jurisdiction over his claims. See 28 U.S.C. §§ 1331-32; Kokkonen
v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994)
(federal courts' jurisdiction limited to that authorized by
Constitution and statute). The Court liberally construes
Plaintiff's first claim as arising under § 1983. See Erickson v.
Pardus, 551 U.S. 89, 94 (2007) (per curiam) (pro se filings should
be liberally construed).

1 library, sewing a trucker jacket, [and] ruminating at an
2 acceptable level is legal and should not warrant a handcuff laden
3 expulsion").)

4 He seeks \$250,000 in damages and the release of various
5 documents allegedly subject to the Freedom of Information Act, 5
6 U.S.C. § 552, and certain provisions of the California Public
7 Records Act, Government Code sections 6250-70 and 6275-76.48.
8 (See FAC at 17.)³

9 STANDARD OF REVIEW

10 A complaint may be dismissed as a matter of law for failure
11 to state a claim "where there is no cognizable legal theory or an
12 absence of sufficient facts alleged to support a cognizable legal
13 theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d
14 1035, 1041 (9th Cir. 2010) (as amended) (citation omitted);
15 accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In
16 considering whether a complaint states a claim, a court must
17 generally accept as true all the factual allegations in it.
18 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Hamilton v. Brown,
19 630 F.3d 889, 892-93 (9th Cir. 2011). The court need not accept
20 as true, however, "allegations that are merely conclusory,
21 unwarranted deductions of fact, or unreasonable inferences." In
22 re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008)
23 (citation omitted); see also Shelton v. Chorley, 487 F. App'x
24 388, 389 (9th Cir. 2012) (finding that district court properly
25 dismissed civil-rights claim when plaintiff's "conclusory

26
27 ³ Some of the documents Plaintiff seeks, such as the "G4S
28 Security Contract Information" (FAC at 17), do not appear to be
subject to those provisions, however.

1 allegations" did not support it). Although a complaint need not
2 include detailed factual allegations, it "must contain sufficient
3 factual matter, accepted as true, to 'state a claim to relief
4 that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting
5 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Yagman v.
6 Garcetti, 852 F.3d 859, 863 (9th Cir. 2017). A claim is facially
7 plausible when it "allows the court to draw the reasonable
8 inference that the defendant is liable for the misconduct
9 alleged." Iqbal, 556 U.S. at 678. "A document filed pro se is
10 'to be liberally construed,' and 'a pro se complaint, however
11 inartfully pleaded, must be held to less stringent standards than
12 formal pleadings drafted by lawyers.'" Erickson v. Pardus, 551
13 U.S. 89, 94 (2007) (per curiam) (citations omitted).

14 DISCUSSION

15 I. The Court Lacks Subject-Matter Jurisdiction over This Action

16 Plaintiff sued Defendants in state court in August 2018
17 based on his "arrest," "expulsion" from the library, and
18 "fraudulent suspension letter." (See, e.g., FAC at 5; id., Ex. D
19 at 25, 30 & Ex. M.) On October 10, 2018, that court evidently
20 dismissed Plaintiff's lawsuit. (See FAC at 5; id., Ex. N.)⁴

23 ⁴ The superior court's website still lists it as "[p]ending,"
24 however. See Online Servs., Super. Ct. of Cal., Cnty. of L.A.,
25 <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>
26 (search for case number BC716638) (last visited Feb. 7, 2019).
27 Plaintiff does not allege whether he filed or attempted to file any
28 appeal in any state court. A search of the California appellate
courts' website yields no evidence that he did. See Cal. App. Cts.
Case Info., <http://appellatecases.courtinfo.ca.gov> (searches for
"Marvin" with "Lowery" in second district and supreme court) (last
visited Feb. 7, 2019).

1 Under the Rooker-Feldman⁵ line of cases, "lower federal courts
2 are without subject matter jurisdiction to review state court
3 decisions, and state court litigants may therefore only obtain
4 federal review by filing a petition for a writ of certiorari in
5 the Supreme Court of the United States." Mothershed v. Justices
6 of Supreme Ct., 410 F.3d 602, 606 (9th Cir. 2005) (as amended).
7 "To determine whether the Rooker-Feldman bar is applicable, a
8 district court first must determine whether the action contains a
9 forbidden de facto appeal of a state court decision." Bell v.
10 City of Boise, 709 F.3d 890, 897 (9th Cir. 2013). "A de facto
11 appeal exists when 'a federal plaintiff asserts as a legal wrong
12 an allegedly erroneous decision by a state court, and seeks
13 relief from a state court judgment based on that decision.'" Id.
14 (quoting Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003)). If
15 the action contains a de facto appeal, a district court is barred
16 from deciding not only the issues adjudicated by the state court
17 but also any other issues that are "inextricably intertwined"
18 with the state court's decision. Id.; Noel, 341 F.3d at 1157-58;
19 see D.C. Ct. of Appeals v. Feldman, 460 U.S. 462, 486-87 (1983).

20 Rooker-Feldman applies even when the challenge to the state
21 court's actions involves federal constitutional issues. Feldman,
22 460 U.S. at 484-86; Dubinka v. Judges of Super. Ct., 23 F.3d 218,
23 221 (9th Cir. 1994). "The doctrine does not, however, prohibit a
24 plaintiff from presenting a generally applicable legal challenge
25 to a state statute in federal court, even if that statute has
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27 ⁵ See Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923); D.C. Ct.
28 of Appeals v. Feldman, 460 U.S. 462 (1983).

1 previously been applied against him in state court litigation."
2 Mothershed, 410 F.3d at 606. "Although a federal district court
3 does not have jurisdiction to review constitutional challenges to
4 a state court's decision, the court does have jurisdiction over a
5 general constitutional challenge that does not require review of
6 a final state court decision in a particular case." Dubinka, 23
7 F.3d at 221.

8 Plaintiff expressly states that the "disposal" of his state-
9 court suit "brought [him] to file this lawsuit in Federal Court
10 on November 15, 2018," after he had also "fil[ed] a complaint
11 about improper conduct" by the superior-court judge who
12 apparently sustained the demurrer and dismissed his case. (FAC
13 at 5; see also id., Exs. N-O.) Even had he not openly admitted
14 that he intends this suit as a de facto appeal of an adverse
15 state judgment, the exhibits attached to the FAC show that
16 Plaintiff's superior-court action sued the same defendants based
17 on the same conduct and that he seeks relief from what was –
18 apparently – an unfavorable outcome there.⁶ (See, e.g., id.,
19 Exs. D (Plaintiff's series of emails to City Attorney Mike Feuer
20 indicating that state case arose from same conduct as that
21 alleged in FAC), L (meet-and-confer email from deputy city
22 attorney to Plaintiff regarding state case), M (defendant's
23 demurrer in state court quoting state complaint making same
24 allegations as those of FAC), N (superior-court minute order
25 dismissing state case based on demurrer), O (Plaintiff's

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28 ⁶ Plaintiff did not attach a copy of his state-court
complaint to the federal one.

1 judicial-misconduct complaint against state-court judge, accusing
2 her of, among other things, "perpetrat[ing]" a "great injustice"
3 against him by sustaining demurrer and thereby "ensur[ing]" that
4 "if someone is sitting in a library," "adjacent to the . . .
5 children's section," "sewing a newly acquired trucker jacket,"
6 and "ruminating about present and past experiences," he will be
7 "in strict danger of being arrested and imprisoned for patroning
8 [sic] a public library").)

9 Thus, the FAC is likely barred by Rooker-Feldman and the
10 Court lacks jurisdiction to entertain it.

11 **II. The FAC Still Does Not State Any § 1983 Claim**

12 Even if Plaintiff could overcome the Rooker-Feldman bar,
13 because he realleges the same deficient allegations as in the
14 original Complaint, the FAC fails to state any cognizable civil-
15 rights claim for the reasons stated in the Court's December 19
16 order.

17 As the Court previously explained to Plaintiff, his Fourth
18 Amendment theory fails because – as he now evidently concedes
19 (see FAC at 5-6) – probable cause existed to arrest him for
20 violating Penal Code section 602.1(b). Contrary to his
21 assertions (see id. at 4, 5-6), it does not matter that he may
22 have been cited for violating section 602(q), which does not
23 appear to apply to his alleged conduct. See Devenpeck v. Alford,
24 543 U.S. 146, 153-54 (2004) (offense establishing probable cause
25 for valid arrest need not be same or even "closely related" to
26 offense cited by officer). Nor does it matter that he was "never
27 subsequently charged with an updated crime describing anything
28 Christy Carr or the Officers noted on June 21, 2018." (FAC at

6.) See Michigan v. DeFillippo, 443 U.S. 31, 36 (1979) ("The validity of the arrest does not depend on whether the suspect actually committed a crime."). Moreover, because probable cause existed, Plaintiff cannot state a constitutional claim based on his less-than-three-hour detention. See Manuel v. City of Joliet, 137 S. Ct. 911, 918 (2017) (valid probable-cause determination provides "constitutionally adequate justification" for detention before legal process has begun).

As the Court also previously explained to Plaintiff, he cannot state any municipal-liability claim against the City or its library – the only two named Defendants⁷ – because he has not adequately pleaded any constitutional deprivation in the first place. See City of L.A. v. Heller, 475 U.S. 796, 799 (1986) (no municipal liability under § 1983 absent showing of constitutional injury). To the extent he intends to make any federal civil-rights claim at all (see supra note 2), that claim still fails.

Because municipal liability for a Fourth Amendment violation evidently remains Plaintiff's only federal-law theory of relief, the Court defers screening of his state-law claims until he has

⁷ It is not clear that the library is a separately suable entity. See Cal. Gov't Code §§ 945 ("[a] public entity may sue or be sued"), 811.2 ("public entity" defined to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state"); see also, e.g., Payne v. Cnty. of Calaveras, No. 1:17-cv-00906-DAD-SKO, 2018 WL 6593347, at *2 (E.D. Cal. Dec. 14, 2018) (county jail not separately suable entity under state Government Code provisions; county was proper defendant) (collecting cases); Waters v. Hollywood Tow Serv., No. CV 07-7568 CAS (AJW), 2010 WL 11465238, at *18 (C.D. Cal. July 27, 2010) (city attorney's office not separately suable entity from city under relevant code provisions), accepted by 2010 WL 11465405 (C.D. Cal. Aug. 31, 2010).

adequately pleaded a federal cause of action. See Herman Family Revocable Tr. v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001).⁸

III. Plaintiff's Public-Records Requests Are Still Premature or Not Cognizable Under § 1983

Plaintiff again seeks "discovery" under FOIA and state public-records statutes. (See FAC at 17-18.) To the extent his request is construed as seeking a discovery order from the Court, that request is again denied as premature. If one of Plaintiff's complaints is ordered served and any Defendant files an answer, the Court may thereafter issue an order allowing discovery to begin.

The Court reiterates that if Plaintiff wishes to make a request under FOIA or the California Public Records Act, he may do so using the procedures described in those statutes and does not need the Court's permission. See generally 5 U.S.C. § 552; Cal. Gov't Code § 6253; see also U.S. Dep't of Justice, FOIA.gov, <https://www.foia.gov> (providing portal for users to create FOIA request online); Cal. Att'y Gen.'s Off., Summary of the

⁸ The Court again notes, however, that in bringing a state-law tort claim against a public entity or employee, a plaintiff must plead compliance with the California Tort Claims Act or the claim is subject to dismissal. See State v. Super. Ct. (Bodde), 32 Cal. 4th 1234, 1239, 1245 (2004); Mangold v. Cal. Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995). This requirement applies in federal court. See Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 627 (9th Cir. 1988). The FAC alleges that Plaintiff "accuse[d]" Defendants "under the California Tort Claims Act" on January 14, 2018. (FAC at 7.) Because that date is five months before the conduct in the FAC supposedly occurred, Plaintiff cannot possibly have satisfied the claims-presentation requirement on that date for the torts alleged in this action. He is again warned that failure to allege compliance with the Tort Claims Act could lead to dismissal of his state-law tort claims.

1 California Public Records Act of 2004 (Aug. 2004), [http://](http://ag.ca.gov/publications/summary_public_records_act.pdf)
2 ag.ca.gov/publications/summary_public_records_act.pdf.

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4 If Plaintiff desires to pursue his claims, he is ORDERED to
5 file a second amended complaint within 28 days of the date of
6 this order, remedying the deficiencies discussed above. The SAC
7 should bear the docket number assigned to this case, be labeled
8 "Second Amended Complaint," and be complete in and of itself,
9 without reference to the original Complaint, FAC, or any other
10 pleading, attachment, or document.

11 Alternatively, Plaintiff may elect to stand on his claims as
12 pleaded. See Edwards v. Marin Park, Inc., 356 F.3d 1058, 1063-64
13 (9th Cir. 2004); (see also supra note 1). Should he choose that
14 option, he must file a notice with the Court within 28 days of
15 the date of this order clearly indicating as much. He may not
16 attempt to do both by filing a verbatim copy of the Complaint or
17 FAC in the guise of an amended pleading.

18 Plaintiff is again advised that he may wish to seek help
19 from one of the federal "pro se" clinics in this District. The
20 clinics offer free on-site information and guidance to
21 individuals who are representing themselves (proceeding pro se)
22 in federal civil actions. They are administered by nonprofit law
23 firms, not by the Court. The clinic closest to Plaintiff is
24 located in Suite 170 of the Edward R. Roybal Federal Building and
25 U.S. Courthouse, 255 East Temple Street, Los Angeles, CA 90012.
26 It is open Mondays, Wednesdays, and Fridays, 9:30 a.m. to 12 p.m.
27 and 2 to 4 p.m. Useful information is also available on the
28 clinics' website, <http://prose.cacd.uscourts.gov/los-angeles>.

1 Plaintiff is warned that if he fails to timely file a
2 sufficient SAC, the Court may dismiss this action on the grounds
3 set forth above or for failure to comply with court orders or to
4 diligently prosecute.⁹

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7 DATED: February 7, 2019



JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

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23 _____
24 ⁹ If Plaintiff believes this order erroneously disposes of
25 any of his claims, he may file objections with the district judge
26 within 20 days of the date of the order. See Bastidas v. Chappell,
27 791 F.3d 1155, 1162 (9th Cir. 2015) ("When a magistrate judge
28 believes she is issuing a nondispositive order, she may warn the
litigants that, if they disagree and think the matter dispositive,
they have the right to file an objection to that determination with
the district judge.").